

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Knut Elbers, et al ) Confirm. No.: 9554  
Serial No.: 10/673,017 ) Art Unit: 1648  
Filed: September 26, 2003 ) Examiner: Sharon L. Hurt  
For: gM-negative EHV-mutants  
Docket No.: 1/1111-1-C1

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT**

Sir:

This is in response to a Notice of Non-Compliant Amendment (37 C.F.R. § 1.121) from the Legal Instruments Examiner mailed on August 4, 2006. In that Notice, a one-month shortened statutory period was set for response. Applicants hereby petition for the necessary extension of time under 37 C.F.R. § 1.136 to respond to that action and note that the fee required under 37 C.F.R. § 1.17(a) in connection with this Reply will be paid during electronic filing via the Revenue Accounting and Management System. Furthermore, if it is determined that any additional fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this response, the Commissioner is, hereby, authorized to charge such fees to Deposit Account No. 02-2955.

While Applicants respectively disagree that the previous Amendment was not signed, Applicants hereby resubmit a new copy of the RESPONSE filed on behalf of the Applicant on August 2, 2006 where the electronic signature contains the registered filer's Registration Number located next to her name, as opposed to below her name.

Respectfully submitted,

/Paula K. Wittmayer/

Paula K. Wittmayer, Reg. No. 53,785  
Attorney for Applicant(s)

Patent Department  
Boehringer Ingelheim Corp.  
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Tel.: (203) 791-6692  
Date: September 7, 2006

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**RESPONSE** (Resubmitted)

Sir:

This is in response to a communication from the Examiner in charge of the subject application, which communication was mailed on July 5, 2006. In that Office communication, a one-month shortened statutory period was set for response. Thus, this response is timely. However, if it is determined that an extension of time under 37 C.F.R. § 1.136 is necessary, applicants hereby petition for the necessary extension. Furthermore, if it is determined that any additional fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this amendment the Commissioner is, hereby, authorized to charge such fees to Deposit Account No. 02-2955.

Applicants hereby elect Group I, drawn to an Equine Herpes Virus wherein the nucleotide sequence encodes a protein, a pharmaceutical composition comprising the Equine Herpes Virus wherein the nucleotide sequence encodes a protein and a kit comprising the Equine Herpes Virus wherein the nucleotide sequence encodes a protein. Applicants reserve the right to prosecute in one or more divisional applications whatever subject matter is not examined or allowed here.

Application No. 10/673,017  
Response dated August 2, 2006, Resubmitted September 7, 2006  
Reply to Office communication of July 5, 2006

Applicants respectfully submit that all the pending claims are allowable and therefore solicit a Notice of Allowance for all of the pending claims. If the Examiner feels that a telephone interview would be helpful in advancing prosecution of this application, the Examiner is invited to contact the attorney below.

Respectfully submitted,

/Paula K. Wittmayer/

Paula K. Wittmayer, Reg. No. 53,785  
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